

Internal Revenue Service

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Date:
October 03, 2014

Legend

Taxpayer	=
REIT	=
Accountant	=
Year 1	=

Dear :

This is in reply to a letter dated July 16, 2014, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations for Taxpayer to elect to use the safe harbor of Rev. Proc. 91-50, 1991-2 C.B. 778, in applying section 1286 of the Internal Revenue Code to certain mortgage servicing contracts.

FACTS

REIT is a mortgage real estate investment trust that invests primarily in residential mortgage loans and mortgage-related assets. Taxpayer is an indirect, wholly-owned subsidiary of REIT that has jointly made a taxable REIT subsidiary ("TRS") election with REIT. Taxpayer acquires newly originated government-insured or conventional residential mortgage loans. Taxpayer sells its mortgage loans to third party investors while retaining the mortgage servicing rights ("MSRs") to the loans.

Taxpayer engaged Accountant to prepare its Year 1 federal income tax return, including all election statements. Taxpayer intended to make the safe harbor election provided by Rev. Proc. 91-50, and applied the rates contained therein to determine the extent to which the amounts received under an MSR represent reasonable compensation, for purposes of applying section 1286 to the MSRs. Taxpayer

represents that the safe harbor rates have been used on every subsequent federal income tax return filed by Taxpayer under the belief that the election had been made. However, Accountant inadvertently omitted the election statement required by Rev. Proc. 91-50 when it prepared and delivered the Year 1 return for filing. Taxpayer did not discover the omission upon their review and signing of the Year 1 return prior to filing.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Taxpayer intended to attach the election statement required by Rev. Proc. 91-50 to its Year 1 return and computed its taxable income for the year as if the election statement had been attached to the Year 1 return.

LAW AND ANALYSIS

Section 1286 defines the term “bond” to include a certificate or other evidence of indebtedness. Section 1286(d)(5) defines the term “coupon” to include any right to receive interest on a bond (whether or not evidenced by a coupon). Section 1286(e)(2) defines the term “stripped bond” as a bond issued with interest coupons where there is a separation in ownership between the bond and any coupon that has not yet become payable. Section 1286(e)(3) defines a “stripped coupon” as any coupon resulting from a stripped bond.

In Rev. Rul. 91-46, 1991-2 C.B. 358, a taxpayer sold mortgage loans and at the same time entered into a contract to service the mortgages for amounts received from interest payments collected on the mortgages. The ruling holds that the mortgages are “stripped bonds” within the meaning of section 1286(e)(2) if the contract entitles the taxpayer to received amounts that exceed reasonable compensation for the services to be performed under the contract. The ruling also holds that the taxpayer’s rights to

receive amounts under the contract are “stripped coupons” within the meaning of section 1286(e)(3) to the extent that they are rights to receive mortgage interest other than as reasonable compensation for the services to be performed.

Rev. Proc. 91-50 provides a safe harbor that taxpayers may elect to use in applying section 1286 and Rev. Rul. 91-46 to certain mortgage servicing contracts. When elected, this safe harbor determines the extent to which amounts that a taxpayer is entitled to receive under a mortgage servicing contract represent reasonable compensation for the services provided. In order to elect (or revoke) the safe harbor of Rev. Proc. 91-50, a taxpayer must attach a statement to its timely filed federal income tax return for the first taxable year for which the safe harbor is elected (or revoked).

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has shown good cause for granting a reasonable extension of time to elect the safe harbor of Rev. Proc. 91-50 in applying section 1286 to certain mortgage servicing contracts. We further conclude that the time for filing the election under Rev. Proc. 91-50 is extended to the date that is 60 calendar days from the date of this letter.

This ruling is limited to the timeliness of the filing of Taxpayer's election under Rev. Proc. 91-50. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Jonathan D. Silver _____
Jonathan D. Silver
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)